

## **Exhibit A**

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Government,

HONORABLE GEORGE CARAM STEEH

v.

No. 12-20063

DENSO CORPORATION,

Defendant.

**GUILTY PLEA AND SENTENCING HEARING**

**Monday, March 5, 2012**

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APPEARANCES:

For the Government:

KATHRYN HELLINGS, ESQ.  
Assistant U.S. Attorney

For the Defendant:

STEVEN F. CHERRY, ESQ.

- - -

*To Obtain Certified Transcript, Contact:*  
*Ronald A. DiBartolomeo, Official Court Reporter*  
*Theodore Levin United States Courthouse*  
*231 West Lafayette Boulevard, Room 238*  
*Detroit, Michigan 48226*  
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*Proceedings recorded by mechanical stenography.*  
*Transcript produced by computer-aided transcription.*

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	<u>Page</u>
Guilty plea and sentencing hearing	4

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N O N E

Detroit, Michigan

Monday, March 5, 2012

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**THE CLERK:** Case Number 12-20063, United States of America versus Denso Corporation.

**THE COURT:** Good morning.

**MS. HELLINGS:** Good morning.

**MR. CHERRY:** Good morning.

**THE COURT:** Who will be talking for the government?

**MS. HELLINGS:** Katie Hellings for the government.

**THE COURT:** Good morning. For the defense?

**MR. CHERRY:** Steve Cherry, your Honor.

**THE COURT:** Okay. Good morning. Do you have a corporate representative today?

**MR. CHERRY:** Yes. My name is Steve Cherry. I am with Wilmer, Cutler, Pickering, Hale and Dorr, and my colleagues with me is Thomas Mueller and Stephanie Wood. The company's representative is Steve Zarowny, the general counsel for Denso International America, Inc., but he's been authorized to speak for Denso Corporation.

**THE COURT:** Okay.

**MR. CHERRY:** And his colleague is Yasushi

1 "Kirk" Katsumi, also from the Denso International America  
2 Legal Department.

3 **THE COURT:** Okay. Good morning.

4 The Court has been presented this morning with a  
5 proposed waiver of indictment and acknowledgement of the  
6 information in this case, and a proposed plea agreement.  
7 So I assume from these documents that the corporation is  
8 going to be pleading guilty to the charge of conspiracy to  
9 restrain trade, is that right?

10 **MR. CHERRY:** Yes, your Honor.

11 **THE COURT:** Okay.

12 **MS. HELLINGS:** Your Honor, in addition, the  
13 government filed a motion to seal Exhibit A to the plea  
14 agreement, and just ask that your Honor please grant that  
15 motion when the plea agreement is also filed later today.

16 **THE COURT:** So the plea agreement will be  
17 become a part of the Exhibit A?

18 **MS. HELLINGS:** No. So there is an Exhibit A  
19 to the plea agreement, which we would like to have filed  
20 under seal. So the plea agreement can be filed, but  
21 Exhibit A we would ask that to be filed under seal.

22 **THE COURT:** Okay. Yes. I took a glance. We  
23 seem to have two different versions of Exhibit A. I'm not  
24 sure which one. Let me look.

25 **MS. HELLINGS:** Exhibit A is under Tab A of

1 plea agreement.

2 **THE COURT:** Okay. I have that.

3 **MS. HELLINGS:** Okay.

4 **THE COURT:** The Court will -- and I'm  
5 assuming that you're joining in that request?

6 **MR. CHERRY:** Yes, we are, your Honor.

7 **THE COURT:** The Court will grant both the  
8 request to seal Exhibit -- well, Exhibit A is the only  
9 request?

10 **MS. HELLINGS:** That's right, your Honor.

11 **THE COURT:** Okay. Under seal.

12 **MS. HELLINGS:** One additional point, if I may  
13 your Honor, Paragraph 8c of the information, there's a  
14 small error in it that I just want to note for the record.

15 Turning to 8c, it says: Agreeing, during those  
16 meetings, conversations and communications to allocate the  
17 supply of ECU's sold to an automobile manufacturer in the  
18 United States and elsewhere on a model-by-model basis, and  
19 I just wanted to note for the record that the ECU's is  
20 actually a standardized product and it's interchangeable  
21 across models. So it's not actually sold on a  
22 model-by-model basis, and I just wanted to note that for  
23 the record.

24 **THE COURT:** Okay. Very fine. And you're in  
25 agreement with as well counsel?

1                   **MR. CHERRY:** I am, your Honor. As long as  
2 we're talking about the information, there's just one  
3 other point that we would like to make.

4                   There are a few places in the information that  
5 refer to components being shipped from Japan to the United  
6 States to be put in cars manufactured in the United  
7 States. We're not aware of that happening with respect to  
8 our company. We understand from Ms. Hellings that that  
9 may have happened with respect to other companies, and so  
10 we just wanted to point out that that's not something that  
11 we are aware of. We don't dispute that it may have  
12 happened with others.

13                   **MS. HELLINGS:** Not with said company in this  
14 conspiracy.

15                   **THE COURT:** I see. Okay. That would not be  
16 in the essential element of this charge --

17                   **MS. HELLINGS:** No.

18                   **THE COURT:** -- is that right?

19                   **MR. CHERRY:** That's right.

20                   **MS. HELLINGS:** That's right.

21                   **THE COURT:** Very fine. Thanks.

22                   **MS. HELLINGS:** And the issue with the ECU is  
23 not part of the plea agreement at all.

24                   **THE COURT:** Very good. Thanks. All right.

25                   So I think if we have you and your client step up

1 to the podium, we'll administered an oath. If you would  
2 raise your right hand, sir.

3  
4 (Defendant sworn in by deputy clerk.)

5  
6 **THE COURT:** Okay. Would you state your name  
7 for us?

8 **THE DEFENDANT:** Steve Zarowny.

9 **THE COURT:** Mr. Zarowny, you are acting today  
10 as an authorized representative of Denso Corporation?

11 **THE DEFENDANT:** Correct.

12 **THE COURT:** And that authorization was by a  
13 board resolution?

14 **THE DEFENDANT:** Yes, your Honor.

15 **THE COURT:** Okay. You have signed apparently  
16 several documents including an acknowledgement of the  
17 information filed in this case?

18 **THE DEFENDANT:** Yes, your Honor.

19 **THE COURT:** And you have gone over that  
20 document carefully with your counsel?

21 **THE DEFENDANT:** Yes.

22 **THE COURT:** You believe that you understand  
23 it?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** You understand the nature of the

1 charges?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And you -- and on behalf of your  
4 client, do you waive the reading of this information,  
5 counsel?

6 **MR. CHERRY:** We do, your Honor.

7 **THE COURT:** Okay. And you understand the  
8 maximum penalty for the violation of conspiracy to  
9 restrain trade?

10 **THE DEFENDANT:** Yes, your Honor.

11 **THE COURT:** So you know that the Court may  
12 consider statutorily a maximum of \$100 million as a fine  
13 or twice the gross pecuniary gain the conspirators derive  
14 from the crime, or twice the gross pecuniary loss caused  
15 to the victims of the crime by the conspiracy. You  
16 understand those are the maximum penalties involved?

17 **THE DEFENDANT:** Yes, your Honor.

18 **THE COURT:** And you signed this document  
19 entitled "waiver of indictment"?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** And you understand that permits  
22 the Court to proceed to consider a plea based upon the  
23 information which is a document written by the government  
24 without the participation of a grand jury?

25 **THE DEFENDANT:** I understand, your Honor.

1                   **THE COURT:** And you understand in that  
2 connection that the company has a right to require  
3 consideration of potential charges in this case by a grand  
4 jury?

5                   **THE DEFENDANT:** Yes, your Honor.

6                   **THE COURT:** And you know that a grand jury is  
7 made up of 26 or more citizens from the community who  
8 would hear evidence presented by the government if the  
9 grand jury were involved in this case?

10                  **THE DEFENDANT:** Yes, your Honor.

11                  **THE COURT:** And at least 23 of those folks  
12 would have to vote to charge in an indictment the  
13 corporation with some conduct before the charges could  
14 proceed?

15                  **THE DEFENDANT:** Yes.

16                  **THE COURT:** By waiving your right to  
17 indictment, you're essentially waiving the right to have  
18 this matter reviewed and considered by a grand jury, and  
19 the possibility that the grand jury would refuse to return  
20 an indictment, you understand that?

21                  **THE DEFENDANT:** Understood, your Honor.

22                  **THE COURT:** And you're making that waiver  
23 voluntarily?

24                  **THE DEFENDANT:** Yes, your Honor.

25                  **THE COURT:** You also signed this Rule 11 plea

1 agreement, is that right?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And you've gone over this  
4 document with your counsel carefully?

5 **THE DEFENDANT:** I have, your Honor.

6 **THE COURT:** Again, you understand that the  
7 plea agreement contemplates a plea of guilty to the charge  
8 of conspiracy to restrain trade?

9 **THE DEFENDANT:** Yes, your Honor.

10 **THE COURT:** And again, you understand the  
11 maximum penalty as I've described it already this morning?

12 **THE DEFENDANT:** Yes, your Honor.

13 **THE COURT:** And as a part of this agreement  
14 if the Court accepts it, the corporation can anticipate a  
15 sentence which would include a fine of -- I saw it here  
16 earlier --

17 **MS. HELLINGS:** Seventy-eight million.

18 **THE COURT:** -- \$78 million, you understand  
19 that?

20 **THE DEFENDANT:** Yes, your Honor.

21 **THE COURT:** And as a part of this agreement,  
22 the government would -- has promised not to bring other  
23 criminal charges against the corporation for anything  
24 occurring up to the date of the plea in this case today,  
25 today's date or sentencing?

1                   **MS. HELLINGS:** Today's date is fine.

2                   **THE COURT:** All right. You understand that,  
3 sir?

4                   **THE DEFENDANT:** Yes, your Honor.

5                   **THE COURT:** That promise however, would not  
6 insulate or protect the corporation from potential civil  
7 penalties that may be imposed, you understand that?

8                   **THE DEFENDANT:** Yes, your Honor.

9                   **THE COURT:** And it would not protect the  
10 corporation from civil lawsuits by other aggrieved  
11 parties, you understand that?

12                   **THE DEFENDANT:** Yes, your Honor.

13                   **THE COURT:** And it would not protect the  
14 corporation from potential tax liability for the  
15 misconduct?

16                   **THE DEFENDANT:** Yes, your Honor.

17                   **THE COURT:** You understand the sentence  
18 imposed would not include a term of probation or  
19 supervision in this matter?

20                   **THE DEFENDANT:** Yes, your Honor.

21                   **THE COURT:** And there would be no restitution  
22 ordered with this agreement if accepted by the Court. The  
23 question of restitution would apparently be left to the  
24 civil cases to determine, you understand that?

25                   **THE DEFENDANT:** We understand, your Honor.

1                   **THE COURT:** Okay. Have there been any  
2                   promises made to the corporation that are not contained in  
3                   this Rule 11 agreement causing the corporation to plea  
4                   guilty today?

5                 **MR. CHERRY:** No, your Honor.

6                   **THE COURT:** Has this plea of guilty been  
7                   motivated by pressure, duress or mistreatment of any kind?

8 THE DEFENDANT: No.

9                               **THE COURT:** You believe the corporation is  
10       pleading guilty freely and voluntarily because it is  
11       guilty of the offense?

12                 **THE DEFENDANT:** Yes, your Honor.

13                               **THE COURT:** You understand that if the Court  
14                               accepts the plea of guilty and proceeds to sentence in  
15                               this case, that the corporation is giving up a number of  
16                               important legal rights that it otherwise had in the case?

17                 **THE DEFENDANT:** Yes, your Honor.

18                               **THE COURT:** And those rights most  
19                               significantly include the right to appeal the conviction  
20                               and the sentence imposed by the Court as long as the  
21                               sentence is in accord with the agreement reached here?

22                 **THE DEFENDANT:** Understood, your Honor.

23                   **THE COURT:** Okay. In addition, it includes  
24           the right to have a trial instead of pleading guilty, you  
25           understand that?

1                   **THE DEFENDANT:** We understand.

2                   **THE COURT:** In that connection there are a  
3 number of rights that I need to review with you.

4                   You understand, and the corporation does, it has  
5 the right to be represented by an attorney throughout the  
6 case including the trial, sentence and appeal of the  
7 matter?

8                   **THE DEFENDANT:** Yes, your Honor.

9                   **THE COURT:** You understand that as we  
10 discussed it, it has the right to be charged by an  
11 indictment rather than by information?

12                   **THE DEFENDANT:** Yes, your Honor.

13                   **THE COURT:** And that as a corporation  
14 organized and existing under the laws of Japan, it had the  
15 right to decline to accept service of the summons, and to  
16 contest the jurisdiction of the United States to prosecute  
17 the case against it in this court?

18                   **THE DEFENDANT:** Yes, your Honor.

19                   **THE COURT:** You understand that it had the  
20 right to plead not guilty to these criminal charges?

21                   **THE DEFENDANT:** Yes, your Honor.

22                   **THE COURT:** And to have a trial where it  
23 would be presumed not guilty of the charges unless and  
24 until the United States proved -- would prove each  
25 essential element of the charged offenses beyond a

1 reasonable doubt?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** And in this connection, of  
4 course, it had the right to have this matter considered by  
5 a jury to make the decision as to its guilt or innocence  
6 in the case?

7 **THE DEFENDANT:** Yes, your Honor.

8 **THE COURT:** And assuming a jury trial, any  
9 jury verdict would have to be unanimous, that is, each and  
10 every juror among the 12 jurors hearing the case would  
11 have to agree before a verdict could be returned?

12 **THE DEFENDANT:** We understand, your Honor.

13 **THE COURT:** Under some circumstances the  
14 corporation could waive its right to a jury trial and have  
15 the Court alone make a decision?

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** You understand that the attorney  
18 for the corporation would have the opportunity to cross  
19 examine all of the witnesses called by the government to  
20 testify against it?

21 **THE DEFENDANT:** Yes, your Honor.

22 **THE COURT:** And again, if found guilty, the  
23 corporation would have the right to appeal the conviction?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** And the sentence that the Court

1 may impose for the violation?

2 **THE DEFENDANT:** Yes, your Honor.

3 **THE COURT:** You understand again, by pleading  
4 guilty, there won't be a trial. So the corporation is  
5 waiving or giving up all of the rights that we just  
6 discussed?

7 **THE DEFENDANT:** Yes, your Honor.

8 **THE COURT:** In terms of the elements or parts  
9 of the charge that the government is required to prove  
10 beyond a reasonable doubt, you understand that the first  
11 among those would require the government to demonstrate at  
12 a trial that the -- there was a conspiracy or agreement  
13 reached among individuals and or other companies to  
14 restrain trade?

15 **THE DEFENDANT:** Yes, your Honor.

16 **THE COURT:** And that the trade involved  
17 affected interstate or foreign commerce?

18 **THE DEFENDANT:** Yes, your Honor.

19 **THE COURT:** And that the -- your company,  
20 Denso Corporation, voluntarily joined into this criminal  
21 agreement or conspiracy to restrain trade in the manner  
22 which is set forth in the information that you had a  
23 chance to read?

24 **THE DEFENDANT:** Yes, your Honor.

25 **THE COURT:** You have to prove -- do you have

1 to prove 5,000 employees or something as well?

2 **MS. HELLINGS:** No, that's part of the  
3 culpability, but we would have to show that the defendant  
4 knowingly entered into the agreement.

5 **THE COURT:** Okay. So as a part of  
6 voluntarily and knowingly entering into this agreement,  
7 you understand Denso Corporation would have to be shown to  
8 understand the object or purpose of the criminal agreement  
9 reached?

10 **THE DEFENDANT:** Yes, your Honor.

11 **THE COURT:** All right. Well, understanding  
12 then the likely consequences of this plea of guilty and  
13 understanding the rights that the corporation is giving up  
14 in order to do so, is it still your wish to tender this  
15 plea of guilty on behalf of the defendant?

16 **THE DEFENDANT:** Yes, your Honor.

17 **THE COURT:** How then does Denso Corporation  
18 wish to plea, guilty or not guilty?

19 **THE DEFENDANT:** Guilty.

20 **THE COURT:** And would you like to describe  
21 what you believe the corporation did in order to be found  
22 guilty of this charge?

23 **THE DEFENDANT:** Yes, your Honor. In  
24 anticipation of your question, I prepared some notes which  
25 I will be referring to.

1                   **THE COURT:**   Okay.

2                   **THE DEFENDANT:**   Denso Corporation is a  
3 Japanese company with its headquarters in the city of  
4 Kariya, Japan.   It employs more than 5,000 people.

5                   Denso International America, Inc. or DIAM, is a  
6 U.S. subsidiary of Denso Corporation. I will refer to them  
7 collectively as Denso.

8                   As to the first count, Denso manufacturers, among  
9 other things, electronic control units or ECU's, including  
10 one type commonly referred as a body ECU.

11                  During the period listed in the information,  
12 approximately January 2000 to February 2010, certain  
13 managers and employees of Denso had discussions and  
14 meetings with competitors that also manufactured and sold  
15 body ECU's.

16                  During these discussions and meetings, agreements  
17 were reached to allocate the supply of body ECU's sold to  
18 an automobile manufacturer, rig bids quoted to this  
19 automobile manufacturer for these body ECU's, and to fix,  
20 stabilize and maintain the prices of body ECU's sold to  
21 this automobile manufacturer in the United States and  
22 elsewhere.

23                  Body ECU's sold by Denso and or the competitors,  
24 related equipment and supplies and payments for the body  
25 ECU's traveled interstate and or foreign commerce, and

1 substantially affected interstate and or foreign trade and  
2 commerce.

3 The meetings and discussions with competitors took  
4 place in the United States and elsewhere, and body ECU's  
5 that were the subject of the conspiracy were sold to the  
6 automobile manufacturer by Denso Corporation's U.S.  
7 subsidiary, which is located in the Eastern District of  
8 Michigan.

9 During the relevant period for purposes of this  
10 plea agreement, Denso had approximately \$237 million of  
11 sales of body ECU's to this automobile manufacturer.

12 As to the second count, Denso also manufactured  
13 heater control panels during the period listed in this  
14 information, approximately January 2000 to February 2010.

15 Certain managers and employees of Denso had  
16 discussions and meetings with competitors that also  
17 manufactured and sold heater control panels.

18 During these discussion and meetings, agreements  
19 were reached to allocate the supply of heater control  
20 panels sold to an automobile manufacturer to rig bids  
21 quoted to this automobile manufacturer for heater control  
22 panels, and to fix, stabilize and maintain the prices of  
23 heater control panels sold to this automobile manufacturer  
24 in the United States and elsewhere.

25 Heater control panels sold by Denso and or the

1 competitors, related equipment and supplies and payments  
2 for the heater control panels traveled interstate and or  
3 foreign commerce, and substantially affected interstate  
4 and or foreign trade and commerce.

5 The meetings and discussions with competitors took  
6 place in the United States and elsewhere, and heater  
7 control panels that were the subject of the conspiracy  
8 were sold to the automobile manufacturer by Denso  
9 Corporation's U.S. subsidiary, which is located in the  
10 Eastern District of Michigan.

11 During the relevant period for purposes of this  
12 plea agreement, Denso had approximately \$211 million of  
13 sales of heater control panels to this automobile  
14 manufacturer.

15 **THE COURT:** All right. Is counsel satisfied  
16 with the factual basis advanced here?

17 **MS. HELLINGS:** Yes, your Honor.

18 **MR. CHERRY:** Yes, your Honor.

19 **THE COURT:** And are counsel also satisfied  
20 with the balance of the plea and its -- that it conforms  
21 with the applicable court rules?

22 **MS. HELLINGS:** Yes, your Honor.

23 **MR. CHERRY:** Yes, your Honor.

24 **THE COURT:** The Court is also satisfied that  
25 the plea is voluntary, knowledgeable and accurate. The

1 elements of the charge have been established by the  
2 testimony received.

3 The Court will accept the plea of guilty, and  
4 having reviewed the plea agreement as well as the  
5 sentencing memorandum that the Court has received, I'm  
6 satisfied that the plea agreement itself may be received  
7 at this point as well.

8 Accordingly, we will proceed to the sentencing  
9 phase, inasmuch as I understand both counsel is requesting  
10 that the Court waive the preparation of a Pre-Sentence  
11 Reports; both counsel being satisfied that the memorandum,  
12 background information provided would allow the Court to  
13 meaningfully entertain and apply the factors that must be  
14 considered by the Court in determining an appropriate  
15 sentence in the matter.

16 Is that also accurate?

17 **MR. CHERRY:** Yes, it is, your Honor.

18 **MS. HELLINGS:** Yes, your Honor.

19 **THE COURT:** What on behalf of the defendant  
20 would you like the Court to consider in determining a  
21 sentence, sir?

22 **MR. CHERRY:** Your Honor, Denso sincerely  
23 regrets its conduct which led to these proceedings, but it  
24 is committed to making things right. It's committed to  
25 the terms of the plea, which provide for a significant

1 sentence, a fine of \$78 million. Seven of our individuals  
2 remain subject to potential criminal prosecution.

3 We also note that Denso's immediate cooperation,  
4 the substantial nature of its cooperation, the burdens it  
5 imposed on the company, we are committed to full and  
6 continuing corporation throughout the government's  
7 investigation and any prosecution. We understand the  
8 cooperation has been very beneficial to the government.

9 We also note the company request that there be no  
10 term of probation. The company is again committed to full  
11 cooperation. It has to do that and intends to do that.

12 We've also instituted an enhanced compliance  
13 procedures, enhanced training, policies. The company has  
14 implemented at the highest level a compliance committee  
15 chaired by the executive vice president of global  
16 operations, which is responsible for insuring compliance  
17 with the law.

18 **THE COURT:** Okay. Thank you very much.

19 Ms. Hellings, on behalf of the government?

20 **MS. HELLINGS:** We would rest on our  
21 sentencing memorandum, Exhibit A, to the plea agreement.  
22 Do you any questions or if you would like to discuss it  
23 with us any further, we can meet with you in camera to do  
24 so, but otherwise I would rest on the papers.

25 **THE COURT:** Okay. Thank you.

1           On behalf of the corporation, are there any  
2 additional comments from your representative, Mr. Zarowny?

3           **THE DEFENDANT:** Your Honor, Denso deeply  
4 regrets this conduct. We apologize and take full  
5 responsibility for our conduct.

6           Denso is a company that takes its corporate social  
7 responsibility seriously, and we are strongly committed  
8 taking all steps necessary to comply with the law. That  
9 commitment includes our continued and complete cooperation  
10 with the ongoing government investigation.

11           **THE COURT:** All right. Thank you, sir.

12           Well, the Court has had an opportunity to review  
13 the sentencing memorandum submitted here, and has  
14 considered the request for a sentence of a fine in the  
15 amount of \$78 million. The method for calculating that  
16 fine is set forth in the memorandum which will be a part  
17 of public information in this file.

18           The guideline calculation is also set forth  
19 which --

20           **MS. HELLINGS:** Your Honor, it is worth noting  
21 the sentence memorandum was filed under seal. So it  
22 wouldn't be publicly available.

23           **THE COURT:** Okay. I thought it was only  
24 Exhibit A.

25           **MS. HELLINGS:** No, your Honor.

1                   **THE COURT:** Okay. Well, the Court is  
2 persuaded by the documents submitted that the -- that the  
3 controlling guideline is found at Section 2R1.1(d)(1), and  
4 based upon the volume of commerce assessed, the base fine  
5 is 20 percent of that volume, which would translate to  
6 something just under \$90 million, 89.6 million.

7                   In terms of the culpability score that is  
8 determined, the base score is five. There is an upward  
9 addition of five points for the fact that Denso employs  
10 more than 5,000 employees, and the -- and there is an  
11 enhancement of three levels for the fact that there was  
12 behavior on behalf of the corporation to obstruct or  
13 impede justice, including the destruction of some  
14 documents, as well as a downward adjustment of two points  
15 for self-reporting the violations by the defendant  
16 ultimately, resulting in a total culpability score of 11.

17                   The fine range then which flows from this basic  
18 calculation yields a range of 197.1 to 394.2 million  
19 dollars to be considered, along with the other factors  
20 under the sentencing statute in determining an appropriate  
21 sentence in this case.

22                   Here, the government's request for fine includes  
23 consideration of substantial assistance provided by the  
24 defendant to its investigation of price fixing in  
25 connection with both the electronic control units as well

1 as heater control panels in this industry, and  
2 cooperation --

3 **MS. HELLINGS:** Your Honor, if I may, some of  
4 this needs to stay under seal.

5 **THE COURT:** Yes, and the full extent of that  
6 cooperation is the subject of information which has been  
7 filed under seal with the Court, which the Court has  
8 reviewed, and based upon that and the level of departure,  
9 then believed commensurate with the assistance as  
10 described in more detail in the memorandum, the ultimate  
11 request for a fine of \$78 million, the Court finds to be  
12 commensurate with the objectives of the sentencing statute  
13 at Section 3553(a), which would include a consideration of  
14 the general seriousness of the violation, obviously one of  
15 great consequence to the markets and the ultimate  
16 consumers of parts, and the need for a sentence that would  
17 fairly deter future contact -- or conduct by Denso  
18 Corporation and other actors in the auto supply industry  
19 from similar violations in the future.

20 Given the fact that several individuals remain  
21 exposed to possible criminal consequences for this  
22 occurrence, that there are a multiplicity of civil actions  
23 that are pending which will undoubtedly exact additional  
24 damages for the offense, the Court is persuaded that  
25 limiting the criminal consequences to a \$78 million fine

1 fairly accounts for the conduct, its seriousness and need  
2 to deter this corporation and others from similar conducts  
3 in the future.

4 Accordingly, and pursuant to the Sentencing Reform  
5 Act of 1984, the Court will order that the defendant pay a  
6 fine for the violation in the amount of \$78 million, will  
7 order a special assessment in the amount of \$400 for the  
8 violation in addition.

9 **MS. HELLINGS:** For each of the counts, and  
10 there are two counts.

11 **THE COURT:** For each of the two counts for  
12 total of \$800, and will not otherwise order a term of  
13 probation, and in terms of the payment of this fine --

14 **MS. HELLINGS:** I understand the defendant  
15 wants to pay by wire transfer. If you could make that  
16 part of the judgment, that would be helpful.

17 **THE COURT:** Okay. So that will be paid  
18 forthwith by wire transfer or within --

19 **MS. HELLINGS:** Within 15 days.

20 **MR. CHERRY:** Within 15 days, your Honor.

21 **THE COURT:** We will include that as a part of  
22 the judgment.

23 Is there anything else that you believe should be  
24 included as part of this judgment?

25 **MR. CHERRY:** Your Honor, I think just the

1 fact that the waiver of restitution because of the civil.

2 **THE COURT:** Okay. Given again the civil  
3 actions that are pending in court, the Court will not be  
4 ordering restitution or other costs that might otherwise  
5 might be imposed under the statute.

6 Is there a need for the Court to retain  
7 jurisdiction to enforce the terms of the plea agreement?

8 **MS. HELLINGS:** I don't think so, your Honor.

9 **THE COURT:** Okay. All right. You're in  
10 agreement of that, counsel?

11 **MR. CHERRY:** We are, your Honor.

12 **THE COURT:** All right. So that will be the  
13 extent of the judgment that is to be entered by the Court.

14 I won't be advising the defendant of a right to  
15 appeal the conviction and sentence inasmuch as that has  
16 been waived by the plea agreement, but we will get this  
17 judgment entered today.

18 **MS. HELLINGS:** Thank you, your Honor.

19 **MR. CHERRY:** Thank you, your Honor.

20 **THE WITNESS:** Thank you, your Honor.

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23  
24 (Proceedings concluded.)  
25

**C E R T I F I C A T I O N**

I, Ronald A. DiBartolomeo, official court reporter for the United States District Court, Eastern District of Michigan, Southern Division, appointed pursuant to the provisions of Title 28, United States Code, Section 753, do hereby certify that the foregoing is a correct transcript of the proceedings in the above-entitled cause on the date hereinbefore set forth.

I do further certify that the foregoing transcript has been prepared by me or under my direction.

\_\_\_\_\_  
Ronald A. DiBartolomeo, CSR  
Official Court Reporter

\_\_\_\_\_  
Date

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